

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

RHONDA BURNETT, JEROD BREIT, JEREMY KEEL, HOLLEE ELLIS, and FRANCES HARVEY, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF REALTORS, REALOGY HOLDINGS CORP., HOMESERVICES OF AMERICA, INC., BHHAFFILIATES, LLC, HSF AFFILIATES, LLC, RE/MAX LLC, and KELLER WILLIAMS REALTY, INC.,

Defendants.

Case No. 4:19-cv-00332-SRB

CLASS ACTION

ORAL ARGUMENT REQUESTED

THE HOMESERVICES DEFENDANTS' RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW

Under Rule 50(b) of the Federal Rules of Civil Procedure, and for the reasons explained in the accompanying brief, HomeServices of America, Inc. (“HomeServices”); BHHAffiliates, LLC (“BHHAffiliates”); and HSF Affiliates, LLC (“HSFAffiliates”) (collectively, the “HomeServices Defendants”) move for judgment as a matter of law. The HomeServices Defendants are entitled to judgment as a matter of law because Plaintiffs failed to produce evidence of any kind—direct or circumstantial—in support of their claim that the Defendants conspired to “follow and enforce” the Cooperative Compensation Rule. The HomeServices Defendants are further entitled to judgment as a matter of law because no Plaintiff ever transacted directly with any HomeServices Defendant, and Plaintiffs thus lack standing to bring their claim. Finally, the HomeServices Defendants are entitled to judgment as a matter of law because the expert testimony on which

Plaintiffs relied to prove impact and damages was inadmissible and failed to establish that the quantum of alleged damages could be proven on a class-wide basis.

The HomeServices Defendants are also entitled to judgment as a matter of law for the reasons set forth in the separate motions concurrently filed by Defendants The National Association of REALTORS® and Keller Williams Realty, Inc. The HomeServices Defendants fully join and incorporate by reference those Defendants' Rule 50(b) motions.

Dated: January 8, 2024

Respectfully submitted,

Theodore Joseph Boutrous, Jr, *pro hac vice*
Christopher D. Dusseault, *pro hac vice*
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7804
tbutrous@gibsondunn.com
cdusseault@gibsondunn.com

Gregg J. Costa, *pro hac vice*
Gibson, Dunn & Crutcher LLP
811 Main Street
Suite 3000
Houston, TX 77002
(346) 718-6649
gcosta@gibsondunn.com

Julian Wolfe Kleinbrodt, *pro hac vice*
Gibson, Dunn & Crutcher LLP
One Embarcadero Center
Suite 2600
San Francisco, CA 94111
(415) 393-8382
jkleinbrodt@gibsondunn.com

Cynthia Richman, *pro hac vice*
Harry R.S. Phillips, *pro hac vice*
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue NW

/s/ Robert D. MacGill
Robert D. MacGill, *pro hac vice*
Scott E. Murray, *pro hac vice*
Matthew T. Ciulla, *pro hac vice*
Patrick J. Sanders, *pro hac vice*
MACGILL PC
156 E. Market Street
Suite 1200
Indianapolis, IN 46204
(317) 721-1253
Robert.MacGill@MacGillLaw.com
Scott.Murray@MacGillLaw.com
Matthew.Ciulla@MacGillLaw.com
Patrick.Sanders@MacGillLaw.com

Brian C. Fries
bflies@lathropgage.com
LATHROP GAGE LLP - KCMO
2345 Grand Avenue
Suite 2200
Kansas City, MO 64108-2618
(816) 292-2000

Jay N. Varon, *pro hac vice*
Jennifer M. Keas, *pro hac vice*
FOLEY & LARDNER LLP
3000 K Street NW
Washington, DC 20007
(202) 672-5300

Washington, D.C. 20036
(202) 955-8234
crichman@gibsondunn.com
hphillips@gibsondunn.com

jvaron@foley.com
jkeas@foley.com

*Counsel for Defendants
HomeServices of America, Inc., BHH
Affiliates, LLC, and HSF Affiliates,
LLC.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 8, 2024, an electronic copy of the foregoing was filed with the Clerk of the Court by using the CM/ECF system and service upon all counsel of record will be accomplished by the CM/ECF system.

/s/ Robert D. MacGill
Robert D. MacGill